IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 555 OF 2007
WITH
CIVIL APPLICATION NO. 773 OF 2007
IN
A.O.NO. 555/2007

Shri Mahadev Damodar Kale .. Appellant.

V/s.

Shri Gulam Hazratali Shah,
Mohammad Khan .. Respondent.

Mr.A.G. Damle i/by Sanjay S. Gawde for the Appellant.

Mr.Pratap Singh for Respondent NO.2.

CORAM : S. A. BOBDE, J.

DATED : 09th JULY, 2007.

P.C. :-

. By this appeal, the appellant/plaintiff has challenged the refusal of injunction by the City Civil Court. The plaintiff has prayed for mandatory injunction order, restraining the defendants from taking forcible possession of suit shop/ gala, admeasuring 424 sq.ft. and open land admeasuring 2252 sq.ft.. The trial court has found, on the basis of the agreement of sale dated 21.12.2006 that the plaintiff had agreed to sale the property i.e. the Gala, which is shown as

admeasuring 2400 sq.ft.. As matter stands, the learned counsel for the Respondents submits that the Respondent has received possession of open land and not the Gala.

2. It appears to have been the appellant's contention before the trial court that there is a typographical error as 2400 sq.ft. is mentioned instead of 240 sq.ft. and therefore, respondent is in possession of the open area. It is true that the open area is not specifically described in the agreement of sale and the Gala is shown as admeasuring 2400 sq.ft.. The trial court after considering the documents has come to the conclusion that the plaintiff is not entitled to any injunction.

3. Having heard the learned counsel for the Appellant and the Respondent, I am of view that the refusal to grant an injunction does not requires any interference of this court. It is clear from the agreement that an area of 2400 sq.ft. was properly sold to the defendant i.e. the respondent. There seems to be no basis for the appellant to claim that there was a typographical error in the area shown and there is no rectification deed nor any notice in which this claim is made by the appellant.

4. In these circumstances, I am of view that the plaintiff/appellant is not entitled to an injunction as prayed for.

5. In the result, the Appeal is hereby rejected. The civil application does not survive and the same is disposed of accordingly.

(S.A.BOBDE,J.)

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